Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner, National Muffler Dealers Association, Inc. (hereinafter "the Association"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on November 21, 1977, affirming denial of

Petitioner's application for a tax exemption as a "business league" pursuant to Section 501(c)(6) of the Internal Revenue Code.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported and is included as Appendix A (infra, p. 1a). The opinion of the District Court, issued from the bench, was not reported and is included as Appendix B (infra, p. 8a).

JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 1977 (Appendix C). Rehearing was not sought. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The time for filing this petition extends to and includes February 19, 1978.

QUESTION PRESENTED

WHETHER THE INCOME TAX EXEMPTION GRANTED TO "BUSINESS LEAGUES" BY SECTION 501(c)(6) OF THE INTERNAL REVENUE CODE IS DEFEATED BY THE FACT THAT ALL MEMBERS OF THE APPLYING ASSOCIATION HOLD A FRANCHISE FROM THE SAME FRANCHISOR.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Petitioner's application for exemption as a business league was based upon Internal Revenue Code, 501(c)(6) which provides that the following entities are exempt from federal income taxation:

> Business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players)* not organized for profit and no part of the net earnings of which inures to the

* The football league language was not added until 1966. This has been the only change in the Statute since 1913.

> benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(6), interpreting this section, provides in pertinent part, as follows:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

STATEMENT OF THE CASE

Petitioner is a trade association comprised of muffler dealers throughout the country, all of whom are franchisees of Midas International Corp., - "Midas Muffler" dealers. Organized on January 8, 1971 under

the New York Not-For-Profit Law, petitioner sought, and ultimately received, recognition from Midas as a bargaining agent of the franchisees. The entire purpose of the association has been to redress the traditional economic imbalance inherent in the franchisor-franchisee relationship.

Other functions of the association include publication of a newsletter advising members of developments in relations with the franchisor and serving as a forum for the exchange of information and ideas and conducting an annual convention which addressed problems common to the members. Petitioner's membership is comprised of Midas franchisees with approximately 620 shops, representing 81% or 82% of the Midas shops in the country.

The purposes of the petitioner association, however, are also well articulated in Article I of its by-laws:

> The purposes of this Association are to foster and promote the interests of those individuals, partnerships and corporations who are engaged in business as muffler dealers and installers and related activities, to promote cooperation and mutual interest among its members, to advance the trade and commerce of its members, to encourage the exchange of ideas among its members for their common good and welfare, to secure, classify and disseminate to its members all information essential or helpful in the conduct of their business.
>
> The Association shall do anything necessary and proper for the accomplishment of any of the foregoing purposes or any other purpose which may be recognized as a proper and lawful objective of trade associations, all of which shall be consistent with the public interest, as well as in the interest of the members.

Petitioner seasonably sought exemption as a business league pursuant to Section 501(c)(6), which exemption was denied by the Internal Revenue Service (IRS). Having thereafter exhausted its administrative remedies, paid the taxes under protest and complied with all prerequisites to an action

for a refund, this action was commenced in the District Court for the Southern District of New York on July 1, 1975. Jurisdiction of the District Court was based upon 28 U.S.C. § 1346(a)(1). After a trial before Hon. Lawrence W. Pierce on May 24, 1977, the complaint was dismissed. By decision dated November 21, 1977, the judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit.

The essential contention of the petitioner is that it is a "business league" entitled to the exemption conferred by Congress. The respondent contends essentially that the exemption is lost because petitioner's members are all franchisees of one franchisor and do not, therefore, constitute a "line of business" as contemplated by the pertinent IRS regulation.

In affirming the dismissal of petitioner's action, the Second Circuit, in

essence, has adopted the respondent's contention.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ requested for two basic reasons:

1. Importance of the Issue

Franchising has a significant and increasing effect upon the economy of the United States, the United States Department of Commerce having estimated that retail sales by franchise outlets throughout the country will reflect 1977 sales of nearly $218 billion, as compared to total retail sales of $703 billion, or 31%. Franchising in the Economy, 1975-1977, U.S. Department of Commerce, December, 1976 (pp.5-6). This ever increasing impact of franchising upon the country's economy makes the entitlement of a franchisee association to tax exempt status a significantly important question

of federal law and one which has not been, but should be, addressed by this Court. The significance of the question is highlighted by the fact that a number of state legislatures have enacted legislation specifically recognizing the need of franchisees to join in associations to deal with their common problems. The granting of tax exemptions to associations of employees joining together to deal with their common employer (IRC § 501(c)(5)) but the denial of a similar exemption to franchisees joining together to deal with their common franchisor raises a very significant federal issue. Petitioner does not believe Congress had any such intention.

2. Conflict in Circuits

The decision of the Second Circuit in this case is in direct conflict with a decision of the Seventh Circuit, the only other reported case dealing

specifically with the issue herein. The Seventh Circuit has affirmed a judgment granting the business league exemption to a trade association comprised solely of individuals, firms or corporations engaged in the bottling and sale of a single product. Pepsi-Cola Bottlers' Association v. United States, 369 F.2d 250 (7th Cir. 1966). The Court below has specifically declined to follow the decision in Pepsi-Cola. (App. A, p.5a)

Merits of Petitioner's Position

Petitioner believes that the two considerations set forth above are alone sufficient to merit granting of the requested writ of certiorari. It is further respectfully urged, however, that a fair review of the decision of the Second Circuit will demonstrate that that court has far too narrowly interpreted the intent of Congress in creating the business league exemption.

In assessing the statutory grant of exemptions within Section 501(c)(6), the Second Circuit concluded that, "...it is the manifest intention of Congress in § 501 (c)(6) to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests." (App. A, p. 5a) The Court then addressed itself to the language of the supporting regulation which states that the activities of a business league "...<u>should be directed to the improvement of business conditions of one or more lines of business</u> as distinguished from the performance of particular services for individual persons." Treas. Reg. 1.501(c)(6)-1, as cited by Court, App. A, p. 5a . (Emphasis by Court) Placing its imprimateur upon the quoted language, the Court found that the "line of business" requirement contained therein "is well suited to assuring that an organization's efforts do indeed benefit

a sufficiently broad segment of the business community." (App. A, p. 5a).

From these dual premises, the Court proceeded to affirm denial of petitioner's requested exemption: "Applying the 'line of business' requirement with a sensitivity to the general considerations which underlie it , we have little difficulty in concluding that the Association does not merit an exemption." (App. A, p. 6a) The essential reason for the affirmation appears to be the finding of the District Court that petitioner "... railed to establish that it conferred any benefit on muffler dealers in general. And even if the Association was able to make such a showing, the industry-wide benefit would be purely incidental to the organization's primary purpose-improving conditions for Midas dealers-and thus an insufficient basis for awarding an exemption. (citing cases)" (App. A, pp. 6-7a)

We respectfully submit that the interpretation placed by the Court upon the statutory grant of the business league exemption is far too narrow and would, if affirmed by this Court, have the effect of denying the exemption to an entire class of organizations which is clearly entitled thereto. There is a genuine need for associations of franchisees who must deal with common problems which are shared by no one else and, although the term "franchisee association" does not appear in the statute, the entire statutory scheme leaves little doubt that the term "business league" properly encompasses within its terms precisely such organizations as the petitioner. In this regard, it is imperative to recognize that, enacted in 1913, Section 501(c)(6) (and the Treasury Regulation subsequently promulgaged with respect thereto) was promulgaged before franchising was even known and long before it had appeared as an integral part of the

American economy. Undefined in the statute, Congress surely intended "business league" to be flexible enough to encompass organizations not then conceived. A fair reading of the statutory scheme reveals a Congressional intent to encourage the formation of organizations consisting of businessmen grouping together to accomplish valid business goals which they could not accomplish by themselves. Indeed, the business league exemption has been granted to a number of diverse groups, including, for example: groups of businessmen whose sole common interest was to deal with legislation to improve their competitive standing in the respective businesses in which they were engaged (Rev.Rul.61-177, 1961-2 Cum.Bull. 117); groups of businessmen with a common interest in dealing with labor unions representing their employees (Rev.Rul. 65-164,1965-1 Cum.Bull.); and groups of employees with a common interest in dealing with their employers (IRC § 501(c)(5)). In

each such instance, the function of the exempt organization was to perform an activity beneficial to its members which such members could not effectively perform alone.

The Internal Revenue Service routinely grants the business league exemption to groups of businessmen whose essential function is to collectively bargain with the unions representing their employees. Would the Second Circuit find in these exemptions a promotion of "some aspect of the general economic welfare" but fail to find such benefit when businessmen join together to collectively bargain with their common franchisor? What difference does it make to the "general economic welfare" that a group of businessmen is bargaining with its common franchisor as opposed to a labor union? The answer, we submit, is none.

As the Eighth Circuit properly observed in affirming a business league exemption granted to a different type of association, "/The Government/ ... contends that Congress intended to exempt only such organizations as were devoted entirely to the general public welfare. Congress did not so say. "Crooks v. Kansas City Hay Dealers' Association, 37 F.2d 83, 84 (8th Cir. 1929) (emphasis added). This is not to say, however, that Congress did not expect some type of public benefit to flow from its grant of tax exemption. We suggest that the Congressional intent to encourage groups of businessmen to join together to accomplish goals which they could not accomplish by themselves was directed at the creation of an economic environment favorable to the individual entrepreneur traditionally regarded as the backbone of the American economy. This is precisely the role of the franchisee association,

which gives to the individual entrepreneur encouragement to enter into business rather than being discouraged by the inherently unequal economic power between the individual franchisee and the monolithic franchisor. This creation of an economic balance between opposing forces militates against monopolization and is consistent with the philosophy underlying this country's antitrust and labor relations laws. It is clearly within the type of public benefit which Congress intended to flow from its creation of tax exempt organizations. The Second Circuit, however, declined to address this contention, apparently finding instead the need for a more concrete, or "visible", type of benefit.

In Pepsi-Cola Bottlers' Association v. United States, supra, in affirming the District Court's determination that the association was entitled to the business

league exemption, the Seventh Circuit held:

> The plaintiff association cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute and regulations a limitation wholly unsupported by the legislative history.
> 369 F.2d at 252 (emphasis added)

This is, however, precisely what the decision of the Second Circuit herein attempts to do.[1]

Recognizing that the statute itself does not attempt to define "business league", the Second Circuit, as it did in Produce

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1. Discussing Pepsi-Cola, the Second Circuit stated merely, in a footnote, that to the extent that its holding was in disagreement with that of the Seventh Circuit, "...we decline to follow the majority opinion in that case." (App. A, p. 5a). In so stating, the Court noted, properly, that the IRS has also stated that it would not follow the Pepsi-Cola decision. Rev. Rul. 68-182, 1968 Cum.Bull. 263. It is well recognized, however, that Revenue Rulings are not law and are not in any way binding on the courts. Mercantile Bank & Trust Co. v. U.S., 312 F. Supp. 1164, aff'd. 441 F.2d 364 (8th Cir. 1970).

Exchange Stock Clearing Ass'n. v. Helvering, 71 F.2d 142 (2d Cir. 1934), has relied upon the doctrine of noscitur a sociis and has thus sought to define "business leagues" by "looking at the general characteristics of the organizations with which they are grouped." (App. A, p. 4a) The common characteristic which the Court finds in Section 501(c)(6) is the fostering of well-being "...within a broadly-defined segment of the commercial sector." (App. A, p. 5a)

It is from this starting point that the Court finds within the statute the requirement that the exempt organization "promote some aspect of the general economic welfare." The Court, however, has failed to address itself to the fact, raised before it by petitioner, that Congress has included within the organizational grouping in the statute "professional football leagues (whether or not administering a pension fund for football players)." We strongly question

whether any of the other organizations grouped in Section 501(c)(6) (boards of trade, chambers of commerce, real estate boards) possesses the "general characteristics of a football league." Regardless, however, it is certain that the "general economic welfare" test espoused by the Second Circuit is satisfied at least as well by a franchisee association as by a football league.

Quite simply, petitioner believes that a business league is properly defined in the first of the applicable Treasury Regulation:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

We believe that this is the language which properly embodies Congressional intent and

that, in denying petitioner the requested exemption the IRS and the Court below have withheld the exemption from precisely the type of organization for which it was intended.

CONCLUSION

The issue of whether a nationwide association of franchisees with a common franchisor is properly entitled to a business league exemption, in view of the continuing and burgeoning development of the franchising concept as a commercial vehicle in our economy, is an important issue which has not previously been dealt with by this Court. This fact, combined with the conflict existing between the Second and Seventh Circuits with regard to the issue, makes granting of the requested writ eminently appropriate.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 252—September Term, 1977.

(Argued November 10, 1977 Decided November 21, 1977.)

Docket No. 77-6106

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Before:

KAUFMAN, *Chief Judge,*
SMITH and MULLIGAN, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Southern District of New York, Pierce, *J.*, dismissing plaintiff's complaint, which sought a "business league" exemption from federal income taxation pursuant to Section 501(c)(6) of the Internal Revenue Code.

Affirmed.

MYRON P. GORDON, New York, New York (Monte Engler and Hoffberg, Gordon Rabin & Engler, of counsel), *for Plaintiff-Appellant.*

PETER C. SALERNO, Assistant United States Attorney (Robert B. Fiske, Jr., United States Attorney for the Southern District of New York; Kent T. Stauffer, Patrick H. Barth, Assistant United States Attorneys, of counsel), *for Defendant-Appellee.*

KAUFMAN, *Chief Judge:*

In addition to its enormous complexity, the Internal Revenue Code often speaks in generalities, and its contours and boundaries are frequently left to be filled by administrative and judicial interpretation. We are called upon to add yet another detail to the Code's broad canvas in determining whether the National Muffler Dealers Association, Inc. ("Association") is qualified to take a tax exemption for the years 1971-73 as a "business league" under §501(c)(6) of the Internal Revenue Code. We agree with the district court that the Association does not benefit an entire "line of business" as required by the treasury regulations, and, accordingly, does not merit an exemption. We therefore affirm the dismissal of the Association's complaint.

I.

The National Muffler Dealers Association was organized in 1971, under the New York Not-For-Profit Corporation Law, as a trade association of "Midas Muffler" dealers. At the time, an internal struggle was taking place within Midas International Corporation ("Midas"), the franchisor of all Midas Muffler dealers, and many of Midas's franchisees were concerned that they might suffer from the pending corporate shake-up. As a consequence of this, they formed the Association to secure themselves against the whims of a new Midas management.

Although the Association's Certificate of Incorporation described its purpose as the promotion of the best interests of muffler dealers generally, its first set of by-laws restricted membership to muffler dealers holding a valid Midas franchise. On October 23, 1972, in an apparent effort to obtain the tax benefits it now seeks, the by-laws were amended to allow any muffler franchisee to join. Since its inception, however, the Association's members have apparently all been Midas Muffler franchisees. During the tax years in question, approximately 50% of all Midas dealers were members, and although, through the Association's efforts, that figure now stands at 80%, there has never been any attempt to recruit outside of the Midas chain.

The Association first attempted to deal with a specific problem, but it soon decided to extend the scope of its activities. In its endeavors, the Association sought generally to redress the inequality of bargaining power existing between its members and Midas, and has been a formidable force at the negotiating table. As a result of its dealings with Midas, franchisees now conduct their businesses under a twenty-year franchise agreement, providing, *inter alia*, that specific cause must exist to terminate a franchise and that disputes must be submitted to arbitration. The group also succeeded in persuading Midas to eliminate its requirement that customers pay a service charge when they seek to replace a guaranteed Midas Muffler. The Association, in addition, provides a number of supplemental services inuring only to the benefit of its members. For example, it sponsors insurance programs, and publishes a newsletter. And, the Association holds an annual convention at which issues of concern to Midas dealers are discussed.

II.

In evaluating the Association's claim to tax-exempt status, our inquiry must first focus on Section 501(c)(6) of the Internal Revenue Code, which provides an exemption to

> [b]usiness leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

There is no challenge to the Association's non-profit status, or the disposition of its earnings. Ours is therefore the lexicographer's task of deciding what is meant by a "business league", and whether the instant Association falls within that definition.

The statute itself does not provide direct guidance. Absent such an explicit directive, we have, in the past, followed the doctrine of *noscitur a sociis*, and sought to define "business leagues" by looking at the general characteristics of the organizations with which they are grouped. In *Produce Exchange Stock Clearing Ass'n* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934), Judge Swan, joined by Judges Learned Hand and Chase, denied an exemption to a stock clearing association which merely served the convenience of its members, finding that characteristic to be one not shared by the business entities listed in the statute. This approach to statutory construction is taken by the treasury regulation enacted pursuant to this section. The regulation provides that,

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not engage

in a regular business of a kind ordinarily carried on for profit. It is an organization *of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business* as distinguished from the performance of particular services for individual persons." Treas. Reg. §1.501(c)(6)-1 (emphasis added).

The admittedly common characteristic of the organizations enumerated in §501(c)(6) is that they foster well-being within a broadly-defined segment of the commercial sector. For a chamber of commerce, that sector is, of course, defined geographically; for a board of trade, a specified business or industry is often an additional defining factor. *Cf. Retailers Credit Ass'n* v. *Commissioner*, 90 F.2d 47 (9th Cir. 1937); Rev. Rul. 73-411, 1973-2 Cum. Bul. 180. Thus, it is the manifest intention of Congress in §501(c)(6) to provide an exemption for organizations which promote some aspect of the general economic welfare rather than support particular private interests. The "line of business" requirement contained in the regulations is well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community.[1] Having thus determined that the regu-

1 To the extent that our holding is in disagreement with the Seventh Circuit's decision in *Pepsi-Cola Bottlers' Ass'n* v. *United States*, 369 F.2d 250 (7th Cir. 1966), we decline to follow the majority opinion in that case. There, the court granted an exemption to a franchisee association composed solely of bottlers of Pepsi-Cola, holding that the "line of business" requirement in the regulations had no support in the statute. Judge Kiley, in a dissent, relied on the doctrine of *noscitur a sociis*, and our *Produce Exchange* case, *supra*, in upholding the validity of the regulation. The Internal Revenue Service has stated that it will not follow the decision in *Pepsi-Cola*, Rev. Rul. 68-182, 1968-1 Cum. Bull. 263, noting that an organization which promotes a single brand or product is not devoted to the improvement of an entire line of business.

lation is reasonable, the limitation it imposes on the meaning of "business league" must be accorded the force of law. *Credit Bureau of Greater New York, Inc.* v. *Commissioner*, 162 F.2d 7 (2d Cir. 1947). *See generally Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496 (1948).

Applying the "line of business" requirement with a sensitivity to the general considerations which underlie it, we have little difficulty in concluding that the Association does not merit an exemption. First, the Association does not draw its franchisee members from a broad base. Indeed, all bear a well-defined business relationship to a single private firm—Midas International Corporation. And the Association's activities reflect its limited constituency. It has endeavored solely to serve the interests of Midas dealers in their day-to-day dealings with their franchisor. The bulk of the muffler industry, in short, is excluded.[2] To the extent that the Association is successful in improving conditions for its members, it does so partially at the expense of non-Midas dealers, who will find themselves facing stronger competition.

The Association attempts to circumvent this outcome by suggesting that its activities do ultimately benefit all muffler franchisees. Given Midas's dominant position in the muffler industry, the Association claims that franchisees of other muffler suppliers will seek and be accorded the benefits won by Midas dealers. We note, however, that Judge Pierce clearly found that the Association had failed

2 In an effort to demonstrate Midas's dominant position in the muffler industry, the Association introduced the testimony of Robert J. Kaden, a market researcher who had conducted a study for Midas. Kaden's investigations indicated that in 18 major metropolitan markets, only approximately 21% of the male consumers had replaced their mufflers at Midas shops. Midas's substantial competitors were private garage or service stations (23%); persons who replaced their own mufflers (27%); other muffler specialists (11%); mass merchandisers (10%); and new car dealers (8%).

to establish that it conferred any benefit on muffler dealers in general. And even if the Association was able to make such a showing, the industry-wide benefit would be purely incidental to the organization's primary purpose—improving conditions for Midas dealers—and thus an insufficient basis for awarding an exemption. *See, e.g., Contracting Plumbers Cooperative Restoration Corporation* v. *United States,* 488 F.2d 684 (2d Cir. 1973), *cert. denied,* 419 U.S. 827 (1974); *General Contractors' Ass'n* v. *United States,* 202 F.2d 633 (7th Cir. 1953).

Finally, the Association argues that since the phenomenon of franchising is relatively new, and could not have been contemplated by the legislature when the predecessor to Section 501(c)(6) was enacted in 1913, we should recognize the strong public interest franchisee organizations serve by granting them an exemption.[3] Whatever its merits, that argument is more appropriately directed to Congress. Nothing in the statute empowers the courts to grant tax exemptions to organizations, however novel, which serve merely some public interest but not the broad interest intended by Congress.

The judgment of the district court is accordingly affirmed.

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3 In pressing this argument, the Association notes the similarities between itself and labor unions, which are granted an exemption under §501(c)(5). It has, however, made no claim that it is qualified for an exemption as a labor organization, and we accordingly express no opinion with regard to the relevance of that section of the Code.

APPENDIX B

THE COURT: This tax refund action having been tried before this Court without a jury on May 24, 1977, the Court now makes the following findings of fact and conclusions of law pursuant to Rule 52(a) Federal Rules of Civil Procedure.

Findings of Fact:

1. Plaintiff, National Muffler Dealers Association, Inc., was organized on January 18, 1971 under the New York Not-For-Profit Corporation Law as a trade association of Midas Muffler franchisees.

2. On or about December 29, 1971, plaintiff filed with the Internal Revenue Service, on Form 1024, an application seeking a tax exemption as a business league under Section 501(c)(6) of the Internal Revenue Code ("the Code").

3. On or about March 28, 1972, the above application was denied. After a District Conference on October 4, 1972, the

denial was confirmed by letter dated June 18, 1974.

4. On or about July 22, 1974, plaintiff filed returns and made tax payments for the fiscal years ending November 30, 1971, 1972, and 1973. The payments were in the sums of $1,237.00, $1,431.00, and $2,689.00 for each of the above years respectively, for a total sum of $5,357.00.

5. On or about September 24, 1974, plaintiff filed claims for refund of the aforesaid amounts with the Internal Revenue Service on the ground that its application for exemption as a business league had been erroneously denied.

6. By letter dated March 24, 1975, the Internal Revenue Service notified plaintiff that the refund claim for fiscal year 1972 had been disallowed.

7. All of the plaintiff's members are Midas Muffler franchisees and throughout its history plaintiff has had no member who

is not a Midas Muffler franchisee.

8. On October 23, 1972, plaintiff's by-laws were amended to eliminate the word "Midas" so that membership was available to any franchised muffler dealers.

9. Despite this amendment, plaintiff has not solicited membership by non-Midas dealers, and a solicitation letter seeking new members, dated November 27, 1975, begins "Dear Fellow Midas Dealer."

10. The plaintiff's principal activities are: (1) acting as a bargaining representative for its members in their dealings with their franchisor, Midas International; (2) the publication of a newsletter; (3) annual conventions; and (4) two insurance programs for its members.

11. The plaintiff's principal accomplishments as a bargaining representative are the gaining of recognition by Midas International; the negotiation of a more favorable franchise agreement; and the elimination of a replacement service charge

imposed upon customers taking advantage of the Midas Muffler guarantee.

12. There is no evidence that plaintiff confers a benefit on the muffler industry as a whole or upon muffler franchisees as a group. Plaintiff's newsletter and other information are disseminated only to Midas dealers, and its bargaining activities, which constitute its most important function, are for the benefit of Midas dealers alone.

13. Midas dealers alone do not constitute a line of business. The Court finds that plaintiff has failed to establish by a fair preponderance of the credible and competent evidence the market share held by Midas International during the years at issue.

14. Plaintiff's evidence demonstrates that, at best, plaintiff has conferred merely an indirect benefit to the public through certain pride reductions and services. There is no evidence of any

direct benefit to the public.

CONCLUSIONS OF LAW

The law applicable to this case has been set forth in the Court's decision on the summary judgment motions; in this Court's judgment, the result herein must be controlled by the decision of the Circuit Court in Produce Exchange Stock Clearing Assn. v. Helvering, 71 F. 2d 142, (2d Cir. 1934) (Swan, J.)

The Produce Exchange decision is the law of this Circuit and that decision binds this Court. Accordingly, the Court rejects plaintiff's contention that this case should be governed by the decision of the Seventh Circuit in Pepsi-Cola Bottlers' Assn. v. United States, 369 F.2d 250 (7th Cir. 1966). Accordingly the Court makes the following further conclusions of law:

1. This Court has jurisdiction of this action under 28 U.S.C. Section

1346(a)(1).

2. To be an exempt business league under Section 501(c)(6) of the Internal Revenue Code, an organization's activities must, during the tax years for which a refund is sought, i.e., 1971, 1972 and 1973, be "directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons." Treas. Reg Section 1.501(c)(6)-1. An organization that "merely serves each member as a convenience or economy in his business" is not a business league. Produce Exchange Stock Clearning Ass'n v. Helvering, 71 F.2d 142, 143-44 (2d Cir. 1934).

3. In the case at bar, the applicable industry is the muffler industry, and the applicable "line of business" is the business of muffler franchisees taken as a whole. Midas Muffler franchisees do not constitute a "line of business" as that term

has been construed by the cases.

4. Since plaintiff's activities during the year in question were not "directed to the improvement of business conditions" in any "line of business" within the meaning of the applicable regulation, and since the plaintiff's activities rendered no direct benefit to the consuming public, plaintiff was not, during the years in question, a "business league" within the meaning of Section 501 (c)(6) of the Internal Revenue Code.

5. Accordingly, the Court concludes that plaintiff has failed to establish the necessary elements of its case by a fair preponderance of the credible evidence.

Judgment should be entered for the defendant the United States of America, dismissing the complaint in all respects with prejudice and costs. Counsel for the

defendant is directed to submit an appropriate order of judgment.

SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of November, one thousand one hundred and seventy-seven.

Present:

HON. IRVING R. KAUFMAN
Chief Judge

HON. J. JOSEPH SMITH

HON. WILLIAM H. MULLIGAN

Circuit Judges,

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States

District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

By
Deputy Clerk

APPENDIX D

JUDGMENT APPEALED FROM (DISTRICT COURT)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Plaintiff

- against -

UNITED STATES OF AMERICA,

Defendant.

----------x

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lawrence W. Pierce, United States District Judge, on May 24, 1977, and at the conclusion of the evidence the Court having made findings of fact and conclusions of law in favor of defendant, it is

ORDERED, ADJUDGED and DECREED: That defendant UNITED STATES OF AMERICA have judgment against plaintiff NATIONAL

MUFFLER DEALERS ASSOCIATION, INC. dismiss-

ing the complaint.

Dated: New York, New York
6/6/1977

United States District Judge